

DATED: 4-25-00
J. Seale
DEPUTY CLERK

ANTHONY LEON GREENHILL,
Petitioner,
v.
J.L. NORWOOD, et al.,
Respondent.

The petition is not a model of clarity. However, generally speaking, Petitioner contends that the Defendants have mishandled his legal mail in retaliation for his exercise of First Amendment rights, which has resulted in the late filing of pleadings and the denial of his access to the Courts. Petitioner is requesting that the Court order prison officials to log all outgoing and incoming mail in special logbooks and that an injunction be issued against retaliatory action by prison officials.

1 Having reviewed the petition, I conclude that Petitioner is not
2 entitled to habeas relief under the allegations pled and accordingly,
3 the petition must be DISMISSED. However, leave to amend shall be
4 granted in order to afford Petitioner an opportunity to present any
5 other viable claim for relief that he may have.

6 The writ of habeas corpus is limited to attacks upon the
7 legality or duration of confinement. *Crawford v. Bell*, 599 F.2d 890,
8 891 (9th Cir. 1979) (citing *Preiser v. Rodriguez*, 411 U.S. 475,
9 484-86 (1973)). " A civil rights action, in contrast, is the proper
10 method of challenging 'conditions of ... confinement.' " *Badea v.*
11 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,
12 411 U.S. 475, 484, 498-99 (1973)); see also *Young v. Kenny*, 907 F.2d
13 974, 975 n. 1 (9th Cir. 1990). Greenhill's petition, which involves
14 allegations of interference with the right of access to the courts
15 and retaliation for the exercise of First Amendment rights, clearly
16 implicates the conditions of confinement. Accordingly, Greenhill is
17 not entitled to habeas relief even if his allegations are true.
18 Should he wish to proceed with a lawsuit relating to these claims,
19 he must seek injunctive relief or monetary damages pursuant to *Bivens*
20 *v. Six Unknown Named Federal Narcotics Agents*, 403 U.S. 388 (1971)
21 and the First Amendment, rather than habeas relief under § 2241.

22 Pro se complaints are to be liberally construed. *Estelle v.*
23 *Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520
24 (1972). Therefore, when a pro se litigant labels a complaint seeking
25 relief from prison conditions as a habeas petition, a court should
26 treat it as a civil rights action. *Wilwording v. Swenson*, 404 U.S.
27 249, 251 (1971) (per curiam); *Hansen v. May*, 502 F.2d 728, 729-30 (9th
28 Cir. 1974); *Gallagher v. McCarthy*, 470 F.2d 740, 741 (9th Cir. 1972).

1 Notwithstanding the court's readiness to treat this matter as
2 a civil rights action, the complaint is deficient on its face.
3 Greenhill's claims are bereft of factual detail and fail to state a
4 claim upon which relief may be granted.

5 IT IS THEREFORE ORDERED as follows:

6 a. The petition is dismissed without prejudice for the reasons
7 stated above.

8 b. Petitioner has until **May 19, 2008**, to file a first amended
9 complaint that remedies the defects identified in this memorandum and
10 order and complies with the requirements of the Federal Rules of
11 Civil Procedure and Local Rule 15-2.¹ Any amended complaint must
12 bear the docket number assigned in this case and must be labeled
13 first amended complaint." Petitioner is advised that an amended
14 complaint is a document stating one or more causes of action against
15 one or more defendants *and is complete in itself without reference*
16 *to the original complaint or any other pleading, attachment or*
17 *document, including letters to the district judge.* Local Rule 15-2.
18 Pursuant to Fed.R.Civ.P. 8, Petitioner should make a short and plain
19 statement of the facts underlying his claims and the nature of the
20 relief he seeks.

21 c. In reviewing the court file, it appears that Petitioner has
22 neither paid the \$150.00 fee for filing a civil action nor complied
23 with the requirements of 28 U.S.C. § 1915(b), in that he has not
24 filed the documents required for proceeding without pre-payment of
25 fees. Along with the first amended complaint, Petitioner must submit

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27 ¹"Every amended pleading filed as a matter of right or allowed by
28 order of Court shall be complete including exhibits. The amended
pleading shall not refer to the prior, superseded pleading." Local
Rule 15-2.

1 the filing fee or an application to proceed without prepayment of
2 costs supported by adequate documentation. The court shall then
3 conduct the initial screening of the complaint as required by 28
4 U.S.C. § 1915(e)(2) or § 1915A.

5 d. If Petitioner fails to timely file the amended complaint,
6 or if the amended complaint fails to properly plead a cause of action
7 against Defendants, the action will be subject to being dismissed
8 with prejudice for failure to diligently prosecute or for failure to
9 state a claim, or both.

10 e. The Court's deputy clerk shall serve on Plaintiff a copy
11 of this memorandum and order and a blank civil rights complaint form
12 bearing the case number assigned to this action and marked to show
13 that it is a "First Amended Complaint." If Petitioner chooses to
14 continue prosecuting this action, Plaintiff must use this form to the
15 extent possible and not simply attach other documents to it and
16 attempt to incorporate claims by reference to the attachments. He
17 may, however, attach a single additional page to detail his
18 allegations, if necessary.

19 f. Upon receipt of a legally sufficient complaint, the court
20 will enter an order directing service upon the appropriately named
21 defendants.

22 Dated: April 23, 2008



Marc L. Goldman
United States Magistrate Judge